

REMARKS

Status of the Application & Formalities

Claim Status

Claims 1-8 are all the claims pending in the application.

Specification and Drawing Objections

Applicants thank the Examiner for withdrawing the objections to the specification and drawings that were made in the office action dated January 21, 2009.

Claim Objections

Applicants thank the Examiner for withdrawing the objection to claim 2 that was made in the office action dated January 21, 2009.

Rejections under 35 U.S.C. § 103(a)

Claims 1-8 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Garcia et al. (US Pub. No. 2003/019068, "Garcia I.")

In rejecting claims 1-8, the grounds of rejection state:

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garcia et al. 2003/0109068. The embodiment of figure 4 of Garcia discloses a fluid dispenser member 1 with a body 10, a fastening means 17, a gasket 18 and an ID unit 3 with the claimed gap immediately above and to the left of 3 in figure 4. Paragraph 30 further discloses that the unit 3 can also be located either in 10 or in the side wall of 10 in lieu of the location buried in the gasket 18 as shown in figure 4. The embodiment of figure 3 discloses that the unit 3 can be located on the side wall of 10 immediately below the claimed gap. One of ordinary skill in the art in considering the disclosure of alternate locations on the side wall of body in figure 3 and at other locations in paragraph 30 would have realized that the unit 3 could be placed within the claimed gap on the side wall of 10 and would have considered this location to be obvious in view of the disclosure in paragraph 30 and the embodiment of figure 3.

In short, the Examiner alleges that it would have been obvious to combine figure 3 of Garcia I with figure 4 of Garcia I to produce all of the claimed features. Applicant notes that “impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.” MPEP § 2142. In the current case, there is nothing in the prior art to provide any rationale as to why it would be obvious to a person of ordinary skill to combine the embodiment in figure 3 of Garcia I with the embodiment in figure 4 of Garcia I.

In the embodiment shown in figure 3 of Garcia I, the ID unit is located inside the reservoir, in direct contact with the fluid. Therefore, it is necessary to protect the ID unit against the negative effects of the fluid. Accordingly, the ID unit in figure 3 of Garcia I is embedded in a protective outer shell or coating, which increases the price of the ID unit. Furthermore, the ID unit is visible through the reservoir. As such, the embodiment shown in figure 3 has several drawbacks.

In the embodiment shown in figure 4 of Garcia I, it is practically impossible to locate the ID unit in a recess of the gasket 18 under the crimping cup 17. First, it is very difficult to produce a gasket with such a recess. Second, there is no place in such a recess to accommodate an ID unit. And third, the ID unit is damaged by the crimping cup 17 during mounting.

The prior art does not recognize or address the above described drawbacks of the embodiments shown in figures 3 and 4 of the Garcia reference. The Examiner is being influenced by hindsight bias in combining the embodiments shown figures 3 and 4.

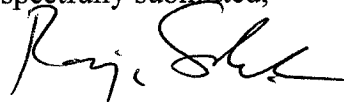
As the Garcia I reference does not recognize or address the drawbacks of the known embodiments, one would not have sought to combine the embodiments shown in figures 3 and 4 of Garcia.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Raja N. Saliba
Registration No. 43,078

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: November 4, 2009